

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

:::

JUDGMENT

State of Rajasthan and another.

VS.

LRs. of Sawa Ram and another.

S.B.CIVIL SECOND APPEAL NO.47/2007
UNDER SECTION 100 CPC AGAINST THE
JUDGMENT AND DECREE DATED
15.10.2004 PASSED BY SHRI PATANJALI
SHARMA, ADDITIONAL DISTRICT JUDGE
NO.3, UDAIPUR IN CIVIL APPEAL
NO.109/1999 (210/1997).

DATE OF JUDGMENT ::: 26.2.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. HR Soni, Addl.GA, for the appellants.

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BY THE COURT:

Heard learned counsel for the appellants.

The appellants/defendants are aggrieved against
the concurrent findings of fact recorded by the two

courts below vide judgments and decrees dated 2.9.1997 and 15.10.2004.

Learned counsel for the appellants submits that the plaintiffs produced one document "PANADI" of the year 1931 to prove his title and possession for the property in dispute. The plaintiff no.1 was insane is the fact admitted in the plaint itself.

According to learned counsel for the appellants, the plaintiffs' suit was barred by time and further the two courts below wrongly discarded the evidence produced by the appellants. It is further submitted that no enquiry was held about insanity of one of the plaintiff. Therefore, the suit could not have been proceeded and consequently, no decree could have been passed by the courts below.

I considered the submissions of learned counsel for the appellants and perused the reasons given by the two courts below.

It is true that in the plaint, it has been stated that the plaintiff no.1 is insane and it is also pleaded that he was residing with the plaintiff no.2. The defendants/appellants denied the insanity of the plaintiff no.1. Be it as it may, the plaintiff no.1 - alleged insane person, died during pendency of the

suit. His legal representatives were taken on record. Issues were framed and the insanity of the plaintiff no.1 so as to disqualify him to institute the suit was never an issue raised by the defendant by asking the trial court to frame the issue on this question.

So far as question of limitation is concerned, admittedly, learned counsel for the appellants submits that the plaintiffs filed the suit on the defendants issuing notice to him on 28.1.1982 wherein it is mentioned that the plaintiffs are intending to encroach upon the land in question whereas the plaintiffs' case is that the plaintiffs are in possession of the property in dispute since before the year 1948. Because of the said notice of 1982, the plaintiff filed suit for prohibitory injunction on 4.2.1982. According to learned counsel for the appellants, the revenue record rather say all records which were in existence in the year 1982 were in the name of the appellants from the year 1932 to 1982 and in view of those entries in the record, the plaintiffs' suit was barred by time. It is submitted that the court below has not considered this aspect of the matter.

The facts mentioned above clearly show that the plaintiffs filed suit for injunction and they claimed that they are in possession of the suit property. The appellants stated that they started construction of

safety tank and some latrines etc. The plaintiffs got threat from the defendants in the year 1982 and, therefore, the plaintiffs filed the suit for injunction in the year 1982 itself.

The contention of learned counsel for the appellants is devoid of any force so far as question of limitation is concerned because of the simple reason that admittedly the appellants issued notice to the plaintiffs and upon that, the suit was filed by the plaintiffs within a period of one month. Two courts below granted decree for injunction against the appellants and that too of prohibitory injunction. The suit for injunction can be filed by any person in possession when the possession is at stakes inspite of the fact that in the documents, the name of other party may be there as the suit for injunction can be filed when there is a threat of dispossession. The plaintiffs have proved that not only that they were in possession but their possession was supported by the evidence that too documentary evidence of the year 1931.

In view of the above reason and in view of the reason that two courts below concurrently relied upon the evidence and that too documentary evidence produced by the plaintiffs, I do not find that any substantial question of law is involved in this appeal.

Consequently, this appeal having no merit, is hereby dismissed with no order as to costs.

S.Phophaliya

(PRAKASH TATIA), J.